



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: )  
 )  
Stat Analysis Corporation II ) Docket No. 5-TSCA-97-012  
Chicago, Illinois )  
 )  
Respondent )  
\_\_\_\_\_ )

INITIAL DECISION AND DEFAULT ORDER

Preliminary Statement

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA) as amended by the Asbestos Hazard Emergency Response Act (AHERA), 15 U.S. C. 2601 et seq., and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Consolidated Rules) at 64 Fed. Reg. 40138 (July 23, 1999) (to be codified at 40 C.F.R. Part 22),<sup>1</sup> for the assessment of a civil penalty.

The Complainant is, by lawful delegation, the Chief, Pesticides and Toxics Branch, United States Environmental Protection Agency (U.S. EPA). This proceeding was initiated by filing of a Complaint on August 1, 1997,<sup>2</sup> against the Respondent, Stat Analysis Corporation II, located at 2201 West Campbell Park Drive, Suite 3315, Chicago, Illinois 60612. A civil penalty of Twenty Thousand Dollars (\$20,000) was proposed in the Complaint for alleged violation of

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<sup>1</sup>All further references are to the revised Consolidated Rules.

<sup>2</sup>Revisions to 40 C.F.R. Part 22 became effective on August 23, 1999 for proceedings commenced prior to that date, unless to do so would cause substantial injustice. 64 Fed. Reg. 40138 (July 23, 1999).

TSCA. This penalty was calculated pursuant to the “Interim Final Enforcement Response Policy of the Asbestos Hazard Emergency Response Act,” dated July 2, 1990, as amended. This policy document is the applicable U.S. EPA guidance used in the assessment of penalties for violations such as those alleged in the Complaint.

The Complaint issued to Respondent states on page 7, in the section headed “Filing of an Answer” that, “If Respondent fails to file a written Answer, with or without a Request for Hearing, within 20 days of service of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order.” The Complaint also states on page 7, that “A Default Order constitutes a binding admission by Respondent of all allegations made in the complaint and a waiver of Respondent’s right to a hearing pursuant to TSCA, 40 C.F.R. 22.27. Such Default Order may become a Final Order of the Administrator within 45 days after its service, 40 C.F.R. 22.27(c).”

The Complaint was received at the place of business of Respondent’s registered agent on August 4, 1997. Respondent had until Monday, August 25, 1997, within which to file its answer as the original due date fell on a Sunday. To date, Respondent has failed to file an Answer to the Complaint.

On July 30, 1998, the Complainant filed a Motion for Default Order. On February 4, 1999, the Complainant filed and Amended Motion for Default Order and Memorandum in Support in Response to the Order to Supplement the Record. Complainant asserts that Stat Analysis Corporation II has been dissolved by the Secretary of State as of January 22, 1998. Complainant amended its Motion for Default Judgment to seek default solely as to liability. Complainant does not wish to expend additional resources to attempt collection of penalty in this

case. However, Complainant would like the record to reflect the default and the legal consequences of default. Pursuant to 40 C.F.R. 22.17(a) of the Consolidated Rules:

Default..... Default by respondent constitutes for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.

### **Findings of Violation**

The following allegations in the Complaint are deemed admitted:

1. On or about September 6, 1995, NIST advised the Respondent by certified mail that its National Voluntary Laboratory Accreditation Program (NVLAP) for airborne asbestos was suspended.
2. On or about July 6 and July 16, 1996, the Respondent conducted TEM analyses on air clearance samples collected by Wright & Company at Willowbrook High School, Villa Park, Illinois, at a time when the Respondent's NVLAP accreditation was suspended.
3. Respondent's NVLAP accreditation for airborne asbestos fiber analysis was not reinstated by NIST until August 27, 1996, over a month after it conducted the TEM analysis.
4. Respondent's act of conducting TEM analyses for airborne asbestos fibers for purposes of compliance with AHERA without being accredited under the NVLAP constituted a violation of Section 15(1)(D) of TSCA, 15 U.S.C. 2614(1)(D), and 40 C.F.R. 763.90(I)(2)(ii).

### **Conclusions**

Jurisdiction for this action was conferred upon U.S. EPA by Section 16 c of TSCA, as amended, 15 U.S.C. 2715(a). Through the Complaint and documents and exhibits submitted together with the Motion for Default Order, the Complainant established a prima facie case

against Respondent. Respondent has not filed an Answer to the Complaint. Respondent is hereby found to be in default pursuant to 40 C.F.R. 22.17(a). Respondent has violated Section 15(1)(D) of TSCA, 15 U.S.C. 2614(1)(D), and 40 C.F.R. 763.90(I)(2)(ii).

### **Default Order**

The Respondent having failed to file an Answer, upon application and affidavit of the Complainant, default judgment is entered against the Respondent. The allegations in the Complaint are deemed admitted.

Pursuant to 40 C.F.R. 22.27c, this Default Order shall become final within forty-five (45) days after service upon the parties unless it is appealed to the Environmental Appeals Board or the Environmental Appeals Board elects, sua sponte to review this Initial Decision and Default Order. Pursuant to 40 C.F.R. 22.30(a)(1), a party may appeal an initial decision within thirty days after service on the parties.

IT IS SO ORDERED.

Dated: January 21, 2000

/S/  
Francis X. Lyons  
Regional Administrator

Prepared by Regina Kossek, Regional Judicial Officer